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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

BRIAND PROPERTIES, et. al.,

Plaintiffs and Respondents,

v.

EMILE MOOSER,

Defendant and Appellant.

H036666
(Santa Clara County
Super. Ct. No. 1-10-CV-185608)

In this appeal defendant Emile Mooser seeks review of a preliminary injunction issued in favor of Michael Dorian and Alexandra Kane-Dorian (collectively, "the Dorians") and the two entities of which the Dorians were principals, Briand Properties LLC and Morgan-Kane Foodservice Group, Inc.¹ (Morgan-Kane). Defendant contends that the superior court's ruling was unsupported by the facts and the law governing the parties' relationship. We find no abuse of discretion and therefore will affirm the order.

Background

In relating the events underlying this dispute, we emphasize at the outset that no trial of the merits has taken place; hence, many significant facts remain in dispute at this

¹ This entity was denoted in the complaint as "Morgan Kane Food Services, Inc.," but in subsequent pleadings its correct name, "The Morgan-Kane Foodservice Group, Inc.," was used.

stage of the litigation. Nevertheless, in the procedural posture of the case, a preliminary injunction, the trial court was required to make certain factual findings, to which we defer to the extent they are supported by substantial evidence. (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1136-1137.) Accordingly, we must view the facts in the light most favorable to the prevailing party—in this case, plaintiffs. (*Shoemaker v. County of Los Angeles* (1995) 37 Cal.App.4th 618, 625; *Smith v. Adventist Health System/West* (2010) 182 Cal.App.4th 729, 739.)

In September 2006 defendant and the Dorians began negotiations for the defendant's sale of his restaurant, Emile's Restaurant, or Emile's, along with the property on which the restaurant sat in downtown San Jose. The Dorians wished to develop the surrounding property into a larger commercial project. Defendant insisted on the creation of separate entities for separate transactions in the sale of the restaurant business and the real property. Accordingly, the parties executed two agreements: one between defendant and the entity representing the restaurant business (Morgan-Kane) and one between him and the company the Dorians created for the purchase of the real property (Briand Properties). Michael Dorian was the managing member of Briand Properties and vice president of Morgan-Kane, while Alexandra Kane Dorian was president of Morgan-Kane.

Both agreements referenced an addendum providing for seller financing of the land sale. In an addendum to the real estate contract the parties agreed that the property was sold "as-is." A subsequent addendum included the acknowledgment that the business likewise was sold on an "as is" basis, without "any representations regarding income or profits from Emile's Restaurant." A third agreement, the "Consulting and Independent Contractor Agreement," provided for three weeks of training at no charge, plus paid consulting, cooking classes, and team-building classes for 60 days thereafter, with fees set by the terms of the agreement and optional extensions of the term.

Escrow closed on the transaction in mid-January of 2007 and the Dorians took over the operation of Emile's. The restaurant was initially successful, but throughout that year and over the next two years, the Dorians became increasingly concerned that defendant was interfering with their business by belittling the owners and staff, arranging for team-building classes while the owners were absent, refusing to reimburse plaintiffs for gift certificates customers had bought before the sale but were redeeming afterward, and diverting business away from Emile's. Defendant also failed to perform the training as promised in the consulting agreement. As business continued to suffer defendant suggested to the Dorians that the reason they were grossing much less than he had was that they were "not doing enough team building and cooking classes." Mr. Dorian interpreted this statement as an admission that Emile's had not been generating the bulk of its income from its operation as a restaurant, as defendant had represented, but had relied upon these outside events to sustain the business.

In October 2008 Mr. Dorian informed defendant that the September payment on the mortgage was being withheld until they resolved the issues over defendant's defamatory attacks and solicitation of team-building business outside of the consulting agreement. Defendant then offered a six-month modification of the mortgage at a one-percent increase in the interest rate (to seven percent), to which Mr. Dorian agreed. In April 2009 defendant offered to extend the modification period in exchange for a permanent increase in the interest rate to eight percent. Mr. Dorian eventually agreed, though he insisted that defendant "back off" from attacking the business.

By July 2009 the value of the pre-escrow gift certificates that customers had redeemed had grown to between \$7,000 and \$9,000. Defendant agreed to credit Briand Properties for the \$4,040.00 July 15 mortgage payment instead of reimbursing Emile's in cash. On August 17, 2009, however, defendant recorded a notice of default claiming money due for both the July and August 2009 payments, even though the August payment was still within the five-day grace period. Mr. Dorian attempted to negotiate

with defendant over the next few months, but was unsuccessful. Mr. Dorian twice tendered the full amount due in November, plus the November payment, for a total of \$25,845.12. Defendant's agent, however, refused to accept it, telling him to pay only what the foreclosure company demanded, \$21,805.12; the agent promised to secure him a few days beyond Thanksgiving to make the November payment. On December 1, Mr. Dorian tendered the November mortgage payment. Through his agent, however, defendant refused the tender and instituted a second foreclosure, which called for nearly \$4,000 in fees for the proceeding. The foreclosure trustee recorded a notice of trustee's sale to take place on April 6, 2010.

On April 5, however, Briand Properties filed for Chapter 11 bankruptcy. On September 30 the bankruptcy court modified the automatic stay to allow defendant to complete the foreclosure proceedings. The bankruptcy case was dismissed on December 30, 2010.

Meanwhile, on April 14, 2010, the San Jose Mercury News reported that defendant had been charged with possession of child pornography. The felony complaint, filed on September 3, 2009, dated the crime as occurring on January 9, 2009. Defendant pleaded no contest to the charge on December 8, 2010.

According to Alexandra Dorian, plaintiffs had relied on defendant's reputation when they purchased the restaurant and retained the name "Emile's"; but when defendant's arrest became public, patronage from customers "significantly dropped off." Friends and family members urged the Dorians to change the name of the restaurant, and one customer "publically [sic] vilified" Ms. Dorian for using "that disgusting name." She acknowledged, however, that in addition to the criminal charges against defendant, defendant's misrepresentation of the source of his revenue, and defendant's interference with the new owners' success, economic conditions "possibly" contributed to the decline in business for Emile's.

Briand Properties, Morgan-Kane, and Michael Dorian initiated this action on October 22, 2010, seeking damages and injunctive relief. In their complaint they alleged (1) intentional misrepresentation of the source of defendant's revenue, defendant's intention to retire, his reputation as a citizen in the community, and his intention to reimburse Briand when the gift certificates he had sold were redeemed by customers; (2) negligent misrepresentation of the same facts; (3) concealment of material information about defendant's criminal activity and the financial details of his business; (4) false promises to assist in the transition and success of the restaurant after the purchase; (5) breach of contract; (6) negligent and intentional interference with prospective business advantage; (7) negligent and intentional interference with contracts plaintiffs had with restaurant staff, prospective corporate and individual customers, and others; (8) trade libel by disparaging the quality of the restaurant's personnel and food; (9) unfair business practices; (10) negligence in assisting in the continued operation of the restaurant as he had promised; (11) violation of Civil Code section 2923.5 in the foreclosure proceeding; and (12) wrongful foreclosure.

Plaintiffs obtained a temporary restraining order the same day, along with an order to show cause on their request for a preliminary injunction. Among defendant's arguments in opposition to the injunction were that plaintiffs could not show irreparable harm if the foreclosure sale proceeded, whereas defendant would be "severely damaged" by any injunction on the sale; and further, that plaintiffs had no reasonable probability of success. In making his argument defendant pointed out that the addenda to the sale of the property and business confirmed the "as-is" nature of each transaction. He also disputed the standing of Briand Properties as a plaintiff, since it did not own or manage the restaurant and Morgan-Kane was a suspended corporation.

Plaintiffs, however, adhered to the position that the second foreclosure was wrongful, as defendant had refused their tenders of the November 2009 mortgage payment. The "as-is" clauses, they further argued, could not insulate defendant from his

misrepresentation and concealment. Granting the injunction would preserve the status quo and thus "protect [their] restaurant business and development project, enable them to support their children during these difficult economic times, keep their employees working, and preserve the main source of recovery on the merits of their claims."

At a hearing on the application on January 3, 2011, plaintiffs addressed the two issues of primary concern to the court: the likelihood that they would prevail on the merits and the hardship that would accrue to each party. Plaintiffs argued that the litigation was not just over the alleged wrongful foreclosure, but over "multiple misrepresentations" regarding the value of the restaurant and the source of its revenue. Plaintiffs further noted the factual issue over the degree to which defendants' criminal activity contributed to the decline in profits compared to the general effect of the economic recession. Plaintiffs also pointed to e-mail correspondence from defendant, which they characterized as "essentially maligning the current management" and employees.

Defendant, however, maintained that plaintiffs had little probability of success because the balance due on the note was \$1.4 million, to which he was entitled. He suggested to the court that "just curing the default isn't going to solve the problem. They're going to have to come up with at least a half-million dollars out of this case in order to put this note and deed of trust back on track and be able to have any hope of paying the entire balance." As for that \$1.4 million balance, "they're never going to pay this off." Defendant also insisted that while he had made it very clear that he was making no representations, he had nonetheless made "a determined effort . . . to make this restaurant successful despite the recession and despite what he viewed as the lack of experience by the plaintiffs in running a restaurant."

On January 10, 2011, the superior court granted plaintiffs' application for a preliminary injunction. In its written order the court first remarked that this "contentious dispute" was complex and likely to be very expensive. What made it so complex, the

court observed, were "the numerous people involved in the disputes, the nature of the accusations from both sides, the serious financial commitments by both sides, and the criminal case against the defendant. There are serious questions about the cause of the failure of the restaurant, whether recession, mismanagement, or defendant's actions. While it is also understood that defendant wishes to distance the criminal matter from this case, it may bear on the issue of credibility as well as the continuing marketability of the restaurant and cooking classes." The court expressed "some reservations" about the ultimate success of the restaurant, but it was convinced that if it denied plaintiffs' application the restaurant would fail—that is, irreparable harm would follow. Defendant, on the other hand, while prejudiced by the failure to pay the debt, was "protected by the presence of the property and the note he holds." Thus, balancing the equities necessarily favored plaintiffs: granting the injunction would "give the restaurant a chance to survive which would presumably be in the better interests of all involved." Nevertheless, in order to protect defendant, the court ordered plaintiffs to establish their standing, add Ms. Dorian as a plaintiff, post a bond of \$35,000, and pay defendant \$4,040 each month beginning March 1, 2011. Defendant filed his notice of appeal from the order on March 9, 2011.

Discussion

Defendant first asserts that the superior court never addressed the issue of whether plaintiffs had a chance of succeeding on the merits. He misperceives the ruling. When the parties appeared on the law-and-motion calendar on December 7, 2010, the court informed them of its view that this was a more complex case than its calendar could handle. Notably, the likelihood of plaintiffs' success was uncertain "because there are so many deep issues." When the parties returned on January 3, 2011, the court immediately alerted them to what it identified as the "critical" issues, including the likelihood of success. The court was specifically interested in the parties' views on the terms of the sale—particularly the lack of any reliance on representations by defendant, the effect of

the recession on the success of the restaurant, the effect of the criminal charges on the goodwill of the restaurant; and plaintiffs' standing. That the court did not make express findings on these questions is not dispositive; in such a case we presume the court made appropriate findings. (*14859 Moorpark Homeowner's Assn. v. VRT Corp.* (1998) 63 Cal.App.4th 1396, 1402.)

It is immediately apparent that defendant does not contest the superior court's finding that if it denied the preliminary injunction, irreparable harm to plaintiffs would result because the restaurant would certainly fail. Defendant's only comment on this point is to protest that he himself "is now 78 years old and is still waiting to be paid for the property he sold almost four years ago to fund his retirement." Without citation to any evidence in the record, he also complains that the property will be worth "substantially less" than it was at the time of the sale, and that he will be facing delinquent property taxes and a restaurant with "little value" because it is "in shambles as a result of deferred maintenance."

Instead of addressing the superior court's balancing of the hardships to the parties, defendant directs our attention to several other issues, mostly pertaining to the probability that plaintiffs can succeed: (1) The bankruptcy court's order granting relief from the automatic stay is res judicata, thereby permitting the foreclosure sale and "eviction of the restaurant" to proceed; (2) Plaintiffs have no standing to sue for damages arising out of the publicity surrounding his criminal conviction; (3) The "as-is" nature of the sale of both restaurant and real property precludes a finding of misrepresentation; (4) Most of plaintiffs' causes of action are barred by either a two-year or a three-year statute of limitations; and (5) Foreclosure is inevitable because plaintiffs will not be able to recover even a fraction of the \$1.4 million they owe on the note.

Defendant seeks de novo review of most of these issues, while acknowledging that the probability of plaintiffs' success on the merits entails issues of fact that require review for substantial evidence. He also recognizes that the decision to grant or deny a

preliminary injunction involves an evaluation of "two 'interrelated' factors: (1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or nonissuance of the injunction." (*Butt v. State of California* (1992) 4 Cal.4th 668, 677-678; *IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69–70.) He refuses to concede, however, that the trial court's ultimate ruling was an exercise of its discretion. *Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, from which defendant selectively quotes, clearly articulates our standard of review: "Generally, the ruling on an application for a preliminary injunction rests in the sound discretion of the trial court. The exercise of that discretion will not be disturbed on appeal absent a showing that it has been abused. [Citations.]" (*Id.* at p. 286.) "Discretion is abused in the legal sense 'whenever it may be fairly said that in its exercise the court in a given case exceeded the bounds of reason or contravened the uncontradicted evidence.' [Citations.]" (*Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 527.) The burden is on the party challenging the injunction to establish that the trial court clearly abused its discretion. (*IT Corp. v. County of Imperial, supra*, 35 Cal.3d at p. 69.)

"Of course, questions underlying the preliminary injunction are reviewed under the appropriate standard of review. Thus, for example, issues of fact are subject to review under the substantial evidence standard; issues of pure law are subject to independent review." (*People ex rel. Gallo v. Acuna, supra*, 14 Cal.4th at pp. 1136-1137.) "The classic rule that if any substantial evidence supports the finding of the trial court as to an issue of fact a reviewing court may not substitute its own evaluation of the evidence, applies to an appeal from a preliminary injunction. A reviewing court may reverse only if an abuse of discretion is shown; and it follows that if substantial evidence supports the order there is no abuse of discretion. (*Union Interchange, Inc. v. Savage* [(1959)] 52 Cal.2d 601, 606)" (*San Diego Gas & Elec. Co. v. San Diego Congress of Racial Equality* (1966) 241 Cal.App.2d 405, 407.) Accordingly, "[w]here the evidence before the trial court was in conflict, we do not reweigh it or determine the credibility of

witnesses on appeal. '[T]he trial court is the judge of the credibility of the affidavits filed in support of the application for preliminary injunction and it is that court's province to resolve conflicts.' [Citation.] Our task is to ensure that the trial court's factual determinations, whether express or implied, are supported by substantial evidence. [Citation.] Thus, we interpret the facts in the light most favorable to the prevailing party and indulge in all reasonable inferences in support of the trial court's order." (*Shoemaker v. County of Los Angeles, supra*, 37 Cal.App.4th at p. 625.)

We examine each of defendant's contentions under the applicable standard, keeping in mind the ultimate determination: whether the court abused its discretion in granting the preliminary injunction. Defendant's assertions of res judicata, lack of standing, and the bar of the statutes of limitations will be addressed first, as they will render moot the remaining issues if defendant is correct on any of these points.

1. The Effect of the Bankruptcy Order

Defendant contends that the bankruptcy court's order modifying the automatic stay to permit him to "complete his non-judicial foreclosure proceedings" was a final order that is beyond challenge because plaintiffs failed to move for reconsideration of or appeal from that order. In his opening brief he appears to be asserting claim preclusion rather than issue preclusion.² The "claim preclusion" aspect of res judicata "prevents relitigation of the same cause of action in a second suit between the same parties or

² In his reply brief defendant adds that issue preclusion is also a bar to plaintiffs' causes of action. It is difficult to see any rational argument in this position. As plaintiffs had not even filed their complaint at the time of the bankruptcy proceeding, no tort or contract issues even existed then. Obviously they could not have been identical to those raised in the bankruptcy proceeding, much less actually litigated and necessarily decided on the merits, which are all predicates for resolution by collateral estoppel. (See *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341; *Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 511.)

parties in privity with them." (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896.)

Defendant fails to convince us that the bankruptcy modification has any preclusive effect on the present state court proceeding. The bankruptcy judge made it clear that he would not attempt to resolve "any tort or any other causes of action the debtor may have." Instead, the court's focus was confined to Briand Properties' ability to reorganize within a reasonable time. Clearly the present lawsuit does not constitute " ' "splitting a single cause of action or relitigation of the same cause of action" ' " as the motion before the bankruptcy judge. (*Mycogen Corp. v. Monsanto Co.*, *supra*, 28 Cal.4th at p. 897.) Neither *Abdallah v. United Savings Bank* (1996) 43 Cal.App.4th 1101 nor *Ta Chong Bank Ltd v. Hitachi* (9th Cir. 2010) 610 F.3d 1063 supplies legal or analogous factual support for defendant's position.

2. Standing

Defendant casts as a question of standing the argument that plaintiffs cannot sue for damages attributable to the negative effects of his criminal activity on his own reputation. He points out that the charge of possessing child pornography was brought more than two years after the 2007 close of escrow, and he suggests that plaintiffs are simply trying to "make a big deal" about the publicity that occurred in 2010 after the newspaper reported the charge. Defendant protests that he had no legal duty to plaintiffs that could have been breached by his criminal conduct, and the effect on plaintiffs' business is "pure speculation."

Clearly this is not a standing issue in any respect.³ Moreover, the question raised by plaintiffs' complaint is not whether defendant breached a duty to them, but whether the

³ Defendant did assert lack of standing below, but that was with regard to the names of the plaintiffs and their qualifications to do business in California. Defendant does not renew that challenge on appeal.

goodwill he purported to convey was worth far less than he represented, inasmuch as plaintiffs intended to retain the name "Emile's" in purchasing the restaurant. This was a material issue in at least the multiple causes of action for misrepresentation and concealment, an issue that is for the trier of fact, not this court. The superior court was within its discretion to consider defendant's conduct potentially significant, at least as it "may bear on the issue of credibility as well as the continuing marketability of the restaurant and cooking classes."

3. Statutes of Limitations

Defendant further contends that plaintiffs will not be able to succeed on their complaint because 11 of their causes of action are barred by the applicable statutes of limitations, Code of Civil Procedure sections 338, subdivision (d) (fraud) and 339, subdivision (1) (oral contract). Plaintiffs are correct that defendant did not raise this issue before the superior court. He attempts to evade a conclusion of forfeiture by disingenuously pointing out that he asserted this statutory bar in his answer to plaintiffs' first amended complaint, without mentioning that this new pleading was filed *after* the court issued the preliminary injunction. In any event, we find no ground for reversal in this new argument, as it depends on factual assumptions that are not within our power simply to accept, such as when plaintiffs became aware of defendant's actionable conduct and whether they complained about it.

4. The Effect of the As-Is Clauses of the Contracts

Defendant renews his argument that there is no substantial evidence of material misrepresentation or nondisclosure because plaintiffs entered into both transactions on an "as-is" basis. He emphasizes that the allegations of misrepresentation are confined to the restaurant business, not the real property, on which he is seeking to foreclose. But the court made it abundantly clear that the two transactions are inextricably linked, as the business will fail if the foreclosure sale now proceeds. Thus, the court in effect stated that the issues arising from defendant's conduct bear upon both the success of the

restaurant and the plaintiffs' ability to make the mortgage payments. That inference is consistent with the declarations of both Dorians, who represented that they were dependent on the income from Emile's to make the payments on the property. Indeed, one of plaintiffs' theories is that defendant deliberately acted in such a way as to "make repayment of the obligation more difficult with the objective of taking back the Property through foreclosure and re-selling it" The superior court's observation that the issues are complex and require "a full hearing for complete resolution" is unquestionably an apt one.

Furthermore, defendant is not necessarily shielded by the as-is clauses in any event. (See *Wilson v. Century 21 Great Western Realty* (1993) 15 Cal.App.4th 298, 305 [as-is clause does not relieve seller of liability for affirmative or negative fraud for failure to disclose facts affecting the value or desirability of property]; see also *Loughrin v. Superior Court* (1993) 15 Cal.App.4th 1188, 1195 ["as is" sale simply means the buyer accepts the property in the condition visible or observable by him, but does not address misrepresentation or concealment].) Whether recovery is precluded by the terms of the contract addendum will turn on the facts as developed at trial or other proceeding.

5. Recovery of Sufficient Damages

Defendant next contends that the preliminary injunction was improperly granted because plaintiffs are unlikely to recover damages exceeding \$1.4 million, the amount necessary to cure their default and pay off the note and first deed of trust. Defendant's position rests significantly on a faulty premise: that plaintiffs must demonstrate that they can recover \$1.4 million, plus "hundreds of thousands of dollars of current default on the Note." Moreover, there are questions concerning whether the note actually was in default, thereby entitling defendant to foreclose. It was not outside the bounds of the court's discretion to grant the preliminary injunction as a means of forestalling the business failure that would inevitably result from foreclosure on the property. The

evidence presented to the court in this proceeding, viewed in the light most favorable to plaintiffs, was sufficient to accomplish that objective.

Setting aside the untenable proposition that plaintiffs had to show a probability of recovering more than \$1.4 million in damages, we find sufficient evidence to support the lower court's implied finding that plaintiffs were likely to obtain at least partial success on their 14 substantive causes of action. It was for the superior court to determine in the first instance whether there was sufficient evidence that defendant intentionally or negligently misrepresented his intentions to help establish the restaurant, whether he misrepresented the source of his income during contract negotiations, and whether he interfered, either intentionally or negligently, with the success of the restaurant after the Dorians took over. These factual issues turned on the credibility of the witnesses before the court; and, as noted earlier, it is the trial court, not this court, that is " 'the judge of the credibility of the affidavits filed in support of the application for preliminary injunction and it is that court's province to resolve conflicts.' [Citation.]" (*Shoemaker v. County of Los Angeles, supra*, 37 Cal.App.4th at p. 625; accord, *Alliant Ins. Services, Inc. v. Gaddy* (2008) 159 Cal.App.4th 1292, 1300.) Likewise, it was for the trial court to draw inferences about defendant's conduct from the communications between defendant and others. Here the superior court had before it the declarations of both Dorians, e-mail correspondence from defendant to prospective customers for his classes, statements from former employees, and financial statements about the property and the business before and after the parties' transaction.

Defendant complains that the Dorians' declarations are "riddled with inadmissible hearsay and completely unsubstantiated wild accusations and conclusions, which are often directly contradicted by Respondents' own documents submitted in support of the application." In defendant's view, the declarations submitted by the Dorians in reply to his opposition demonstrate that "the sole purpose of this lawsuit is to use the pending criminal charge to obtain the Preliminary Injunction, and then use the Preliminary

Injunction to extort a substantial reduction" in the amount of the note. Defendant does not, however, pinpoint the source of his objections. He submitted evidentiary objections to the Dorians' reply declarations, but out of all the numerous disputed statements he listed there he does not identify which ones were resolved incorrectly by the superior court, much less cite any authority supporting his evidentiary challenge. Vaguely advertizing to statements in a declaration without specifying the evidence they consider inadmissible or citing any supporting authorities amounts to a waiver of the contention. (*Overhill Farms, Inc. v. Lopez* (2010) 190 Cal.App.4th 1248, 1271.)

We thus find no abuse of discretion in the superior court's decision to grant the preliminary injunction in this case. It may be that the merits ultimately favor defendant; but at this stage of the litigation, the court properly exercised restraint in determining that it was important to preserve the status quo between the parties, particularly since a contrary ruling would "guarantee the failure" of Emile's Restaurant. (See *Continental Baking Co. v. Katz, supra*, 68 Cal.2d at p. 528 [the general purpose of preliminary injunction is to preserve status quo until final determination of the merits].) Instead, by granting the injunction the court sought to "give the restaurant a chance to survive which would presumably be in the better interests of all involved." Because the "ultimate goal" in deciding whether to issue the injunction is "to minimize the harm [that] an erroneous interim decision may cause" (*IT Corp. v. County of Imperial, supra*, 35 Cal.3d 63, 73, italics added), the fact that "irreparable harm" would result from denial of the application was an important and legitimate factor in the court's evaluation of the circumstances presented to it. The court also reasonably observed that the complexity of the case warranted a cautious approach culminating in "a full hearing for complete resolution."

Our Supreme Court has repeatedly reminded us that "an order granting or denying interlocutory relief reflects nothing more than the superior court's evaluation of the controversy on the record before it *at the time* of its ruling; it is not an adjudication of the ultimate merits of the dispute." (*People ex rel. Gallo v. Acuna, supra*, 14 Cal.4th at p.

1109.) "As noted, a principal objective of a preliminary injunction 'is to minimize the harm which an *erroneous* interim decision may cause' (*IT Corp. v. County of Imperial*, *supra*, 35 Cal.3d 63, 73, italics added), and thus a court faced with the question whether to grant a preliminary injunction cannot ignore the possibility that its initial assessment of the merits, prior to a full adjudication, may turn out to be in error." (*White v. Davis* (2003) 30 Cal.4th 528, 560.) Accordingly, an affirmance of a preliminary injunction "is not a decision on the merits of the complaint[] . . . A full hearing at trial is still required to adjudicate the ultimate rights in controversy here." (*IT Corp. v. County of Imperial*, *supra*, 35 Cal.3d at pp. 75-76.)

Disposition

The order is affirmed.

ELIA, J.

WE CONCUR:

RUSHING, P. J.

MIHARA, J.